

received 9/24/99 @ 2:40 p.m.  
by Jeter Bragg

# FEDERAL COMMUNICATIONS COMMISSION

DOCKET FILE COPY ORIGINAL

In re Applications of:	)	MM Docket No. <u>99-153</u>
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of	)	
Station WTVE (TV), Channel 51	)	
Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS CORPORATION	)	File No. BPCT-940630KG
	)	
For Construction Permit for a New	)	
Television Station to Operate on	)	
Channel 51, Reading, Pennsylvania	)	

CORRECTED COPY

Volume: 2

Pages: 36 through 81

Place: Washington, D.C.

Date: September 10, 1999

---

## HERITAGE REPORTING CORPORATION

*Official Reporters*  
1220 L Street, NW, Suite 600  
Washington, D.C.  
(202) 628-4888

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In Re Applications of:	)	MM Docket No. 99-153
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of	)	
Station WTVE(TV), Channel 51	)	
Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS CORPORATION	)	File No. BPCT-940630KG
	)	
For Construction Permit for a New	)	
Television Station to Operate on	)	
Channel 51, Reading, Pennsylvania	)	

Room No. TWA363  
The Portals  
445 12th Street, S.W.  
Washington, D.C.

Friday,  
September 10, 1999

The parties met, pursuant to the notice of the  
Judge, at 9:30 a.m.

BEFORE: HON. RICHARD L. SIPPEL  
Administrative Law Judge

APPEARANCES:

On behalf of Reading Broadcasting, Inc.:

THOMAS J. HUTTON, ESQ.  
Holland & Knight, L.L.P.  
2100 Pennsylvania Avenue, N.W., Suite 400  
Washington, D.C. 20037  
(202) 955-3000

Heritage Reporting Corporation  
(202) 628-4888

APPEARANCES: (CONT'D)

On behalf of Adams Communications Corporation:

GENE A. BECHTEL, ESQ.  
HARRY F. COLE, ESQ.  
Bechtel & Cole, Chartered  
1901 L Street, N.W., Suite 250  
Washington, D.C. 20036  
(202) 833-4190

On behalf of the Federal Communications  
Commission:

JAMES W. SHOOK, ESQ.  
Mass Media Bureau  
Federal Communications Commission  
Washington, D.C. 20554  
(202) 418-1430

1                                P R O C E E D I N G S

2                        JUDGE SIPPEL: Good morning.

3                        ALL: Good morning.

4                        JUDGE SIPPEL: Please be seated. Ms. Reporter we  
5 can go on the record.

6                        COURT REPORTER: Yes.

7                        JUDGE SIPPEL: Okay. This is a status conference.  
8 First I would like for parties to introduce there themselves  
9 starting with how it's listed on the proceedings.

10                        MR. HUTTON: Thomas Hutton from Holland and  
11 Knight. Representing Reading Broadcasting.

12                        JUDGE SIPPEL: Mr. Bechtel.

13                        MR. BECHTEL: Gene Bechtel and Harry Cole from  
14 Bechtel and Cole, Chartered. On behalf of Adams  
15 Communications Corporation.

16                        JUDGE SIPPEL: On behalf of the Commission, Mr  
17 Shook.

18                        MR. SHOOK: James Shook with the Mass Media Bureau  
19 on behalf of the Commission.

20                        JUDGE SIPPEL: Okay. I received the witness list.  
21 Do you have any comments, Mr Shook.

22                        MR. SHOOK: None, Your Honor.

23                        JUDGE SIPPEL: Do you have any feel for that from  
24 your side, Mr. Hutton?

25                        MR. HUTTON: I am not sure I will have a better

1 sense until I find out exactly who all of our public  
2 witnesses are going to be. I had been expecting to hear  
3 that earlier this week. I am expecting now to hear today.

4 JUDGE SIPPEL: This would be from your client?

5 MR. HUTTON: From my client, yes. Until I have  
6 that information, it is hard for me to say. They have  
7 estimated to me that there will be 25 public witnesses, but  
8 they have been in the process of tuning the list of  
9 possibilities and coming up with an exact list.

10 JUDGE SIPPEL: Well, obviously my first concern is  
11 a very pragmatic one. I have to reserve the courtroom an  
12 appropriate period of time, and then there are other  
13 scheduling matters that I have, too. Well, we will come  
14 back to that. We will come back to that.

15 Right now I am going to reserve the courtroom  
16 right up to before the day before. December 24 I think is  
17 the holiday, but I am expecting and certainly hoping that we  
18 do not have to use all that time. Thus far, there is  
19 nothing that has happened that has given me an indication  
20 that this case is not going to be tried and heard  
21 expeditiously or with a degree of expedition anyway. There  
22 is a lot of preparation going on, and I just am not  
23 anticipating any problem.

24 I know that there are other things we want to  
25 discuss this morning, but while you raise the question of

1 the public witnesses let me tell you what I have in mind.

2 First of all, let me ask Mr. Bechtel first. Are  
3 you anticipating public witnesses on your side other than  
4 possibly for rebuttal? I am going to be very hard put to  
5 grant you that.

6 MR. BECHTEL: It is early to respond to that.  
7 Until we have had a chance to look at the --

8 JUDGE SIPPEL: Sure.

9 MR. BECHTEL: -- list of their witnesses and take  
10 some depositions, I really cannot --

11 JUDGE SIPPEL: Okay. Let me tell you where I am  
12 coming from on that for scheduling purposes, and also I do  
13 want to do everything I can to make it as painless as  
14 possible -- let me put it that way -- for the public  
15 witnesses.

16 I do not want more than 20, and when I say I do  
17 not want more than 20, I do not want more than 20 in total.  
18 Now, I am not putting a bright line on that and saying that  
19 if there are 21 witnesses I am not going to hear the  
20 twenty-first, but I think it is only fair that counsel and  
21 the parties know where I am coming from on this.

22 That is an arbitrary number. I realize that, but  
23 I just cannot see where anything beyond that is necessary to  
24 get the point across with respect to what the public  
25 witnesses are here to establish.

1           Secondly, what I would like to see done, and I  
2   appreciate you raising it this morning, Mr. Hutton, is to  
3   get back to your client and tell him that I am very  
4   concerned about this; the identification of you say 25. If  
5   you want to start with 25, that is fine. I would like to  
6   see that get pared down, but really it is important that  
7   your client get those 25 to you so that you can familiarize  
8   yourself with them.

9           What I want to do is I want to reach a point in a  
10   few weeks where you are able to give the Adams attorneys  
11   certainly a list of who these people are, what their  
12   background is, a summary as to what you expect them to  
13   testify to, and then they can set up a deposition schedule.  
14   That all should be being done as promptly as possible for  
15   obvious reasons.

16           MR. HUTTON: I concur. I have been working on  
17   that, sir.

18           JUDGE SIPPEL: All right. Well, it might help if  
19   you went back and told them that I am concerned about it.

20           Now, maybe before we leave here this morning I can  
21   give a date as to when those depositions should be taken,  
22   but assuming that you have a list like that like I am  
23   talking about within the next ten days, how soon would you  
24   be able to take depositions on your side, Mr. Bechtel?

25           MR. BECHTEL: We have to give 21 days' notice.

1 JUDGE SIPPEL: Well, maybe we can get them to --  
2 you know, this might be able to be done without that,  
3 though. These are witnesses, I am assuming, that are going  
4 to be cooperative with Reading.

5 MR. HUTTON: Yes. I cannot --

6 JUDGE SIPPEL: I know you cannot promise.

7 MR. HUTTON: Without even knowing their  
8 identities, it is hard to waive any rights they may have.

9 JUDGE SIPPEL: I understand.

10 MR. HUTTON: I would say that I think it is in  
11 both sides' interest to cooperate on an expeditious  
12 discovery schedule, and, to the extent that waiving the 21  
13 day notice would be helpful, we would try to make that  
14 happen.

15 JUDGE SIPPEL: Well, all right. Let me leave it  
16 on this basis then. Today is the 10th, and I know you all  
17 are very busy with depositions and whatnot, but by the 24th  
18 I want to receive a status report on the subject of  
19 discovery with respect to public witnesses.

20 I am very much aware of your schedules. You know,  
21 I have been receiving copies of your deposition notices, and  
22 you are all very busy. I just do not want this to get lost  
23 sight of.

24 Okay. There are pending matters that I just want  
25 to review with counsel very briefly. Before I pass off of



1 the public witnesses -- I am sorry, Mr. Shook. Is there  
2 anything that the Bureau wanted to add to that? Does your  
3 side have any interest in any of these questions about the  
4 public witnesses at this point?

5 MR. SHOOK: No, Your Honor. It is our hope that  
6 these learned gentlemen would find a way to settle this  
7 matter, frankly.

8 JUDGE SIPPEL: You want a settlement on this case?

9 MR. SHOOK: Absolutely.

10 JUDGE SIPPEL: Well, we are not here to discuss  
11 settlement this morning. I am not saying that that would  
12 not be a significant development, but unless somebody is  
13 going to raise that now and ask me to oversee a discussion  
14 about settlement, that is not what we are here for.

15 MR. SHOOK: Understood.

16 JUDGE SIPPEL: Now, I just want to briefly touch  
17 on these motions. There is a Reading motion to add program  
18 issues, and I am working on that. I will have something out  
19 on that probably the early part of next week.

20 Secondly, Reading has made a threshold showing or  
21 filed a threshold showing. I am sorry. Adams has filed a  
22 threshold showing of poor broadcasting on the part of  
23 Reading, and I am going to treat those as an opposition and  
24 reply pleading under 1.294, but I want to assign dates that  
25 are a little bit shorter to accommodate getting rulings on

1       them as soon as possible.

2               By September 13, opposition to be hand delivered  
3       to Adams attorneys, and by September 17 a reply pleading  
4       from Adams. As a courtesy, you should hand deliver two, but  
5       that is going to be the end of the pleading cycle.

6               Now, there is also a Reading motion. These were  
7       all filed on September 13, so there is a Reading motion that  
8       is pending on past broadcast experience, and I am going to  
9       assign those same and treat it the same way under 294 and  
10      assign the same dates on the pleading side, the September 13  
11      opposition and September 17 reply.

12              Now, that is all that I have.

13              MR. SHOOK: Your Honor, just so that you  
14      understand, the Bureau may remain neutral with respect to  
15      both of those. We have not decided whether to file anything  
16      or not.

17              JUDGE SIPPEL: All right.

18              MR. SHOOK: We may simply sit back and watch this.

19              JUDGE SIPPEL: All right. I just purposely did  
20      not want to put a requirement on the Bureau for a pleading  
21      on these. I would only ask that if you do file a pleading,  
22      do it on the opposition date so that the reply has an  
23      opportunity to address everything that you have.

24              I am kind of betwixt and between on that because I  
25      like the Bureau's comments to come in after all the

1 pleadings are in. On the other hand, we have come into this  
2 situation where thereafter I get whatever you say, there is  
3 going to be a reply to it.

4 MR. COLE: Your Honor, excuse me. If I might just  
5 on that subject raise a question I was going to raise as a  
6 procedural matter?

7 That is when the Bureau does come in on the  
8 opposition date and provides comments on a motion, the  
9 moving party would normally have the right to reply. Does  
10 the non-moving party have the right to reply? I raise this  
11 because Adams had filed a motion to enlarge against Reading.

12 JUDGE SIPPEL: Correct.

13 MR. COLE: The Bureau commented on that on the  
14 opposition date. Reading opposed Adams' motion on the  
15 opposition date. On the reply date, Reading then filed a  
16 reply to the Bureau's comments, which I view to be as not  
17 contemplated by the rules, but I did not move to strike it  
18 on that basis.

19 I thought it would be appropriate at this point to  
20 raise the question as to whether or not those could or could  
21 not be filed, should or should not be filed. Are they  
22 subject to motions to strike? How would you like to handle  
23 that?

24 JUDGE SIPPEL: Well, let me hear from Mr. Hutton  
25 on that.

1           MR. HUTTON: Well, with respect to the pleading  
2 cycle in question, I think 1.294 gives us an absolute right  
3 to file not only an opposition to the motion filed by Mr.  
4 Cole, but also a reply to any comments in support of the  
5 motion.

6           I do not have my rules in front of me, but 1.294  
7 allows for a reply pleading, whereas a reply pleading  
8 normally is not allowed in the hearing context.

9           JUDGE SIPPEL: Right.

10          MR. HUTTON: 1.294 specifically allows for replies  
11 to oppositions or comments filed on the opposition date.  
12 That is my view.

13          JUDGE SIPPEL: Go ahead, Mr. Cole.

14          MR. COLE: Your Honor, if I might? I have my  
15 rules, and 1.294 as I read it simply says that oppositions  
16 to pleadings shall be filed within ten days, and replies to  
17 such oppositions shall be filed within five days after the  
18 opposition is filed and shall be limited to matters raised  
19 in the opposition.

20          1.45, which is a general pleading rule governing  
21 pleadings in this proceeding and others, specifically refers  
22 at Section (b) to replies. It says the person who filed the  
23 original pleading may reply to oppositions within five days  
24 after the time for filing oppositions has expired.

25          On that basis, it would seem to me that non-moving

1 party replies are not contemplated by the rules, but again I  
2 did not move to strike, and I will not if it is Your Honor's  
3 view that non-moving party replies are to be permitted, but  
4 I thought it would be good to put the question on the table.

5 JUDGE SIPPEL: Well, no. That is a good point. I  
6 agree with Mr. Cole's analysis of the rule. That is  
7 certainly what is contemplated, but since we have started  
8 down this road, and I do not expect to see a lot of it. I  
9 think we are going to be pretty much finished with the reply  
10 pleadings. Well, I should not say that.

11 For the time being anyway we will go forward, and  
12 everybody has advantage of the same procedure. In other  
13 words, for the reply pleading purposes both parties may file  
14 a reply to the Bureau; now, only to what the Bureau comes in  
15 with on the opposition date, and with the same restriction  
16 in the rule.

17 If the reply is going to go beyond a very specific  
18 point that may be raised by the Bureau let's say for the  
19 non-moving party, the moving party, of course, has all the  
20 rights to reply as normally would be the case.

21 MR. HUTTON: To reply to the --

22 JUDGE SIPPEL: You are replying to everything.

23 MR. HUTTON: To reply.

24 JUDGE SIPPEL: You are replying to an opposition.  
25 You are replying to the Bureau's comments.

1           The non-moving party, if there is something in the  
2 Bureau's comment that is essentially new matter, and that is  
3 really what I want to limit it to is something of a new  
4 matter nature, then they are free to reply on that date to  
5 what the Bureau comes in with. That is it. They are not  
6 going to reply to your motion.

7           MR. COLE: And will the moving party then have an  
8 opportunity to respond to that reply?

9           JUDGE SIPPEL: No. No. I mean, no. You know,  
10 you can file a motion with me for leave to strike or for  
11 leave to do something, but, you know, since I have started  
12 down that road I might as well stay with it as long as it is  
13 controllable.

14           I know what you are talking about. I remember  
15 that situation, but it seemed to me that there was something  
16 about the Bureau's comment. Well, I know one of the things  
17 that had me going on that was Adams had changed its position  
18 with respect to the motion that I am thinking of anyway had  
19 to do with, you know, the Bectel II, the post Bectel II  
20 criteria.

21           MR. COLE: No. That is not the situation. I was  
22 thinking about the first Michael Parker pleadings.

23           MR. SHOOK: Your Honor, you are thinking about two  
24 different situations. What Mr. Cole is thinking about is  
25 the motion to enlarge that Adams had filed that sought

1 issues with respect to Michael Parker.

2 JUDGE SIPPEL: Yes.

3 MR. SHOOK: We have filed comments on the, you  
4 know, opposition date, --

5 JUDGE SIPPEL: Right.

6 MR. SHOOK: -- which probably or arguably raised  
7 or essentially invited further comment from Reading, and  
8 they in turn responded to what we had to say.

9 While what we said was, I believe, totally within  
10 the confines of the motion that Adams had filed, it did  
11 raise sort of a new twist to things. So far as I could  
12 tell, Reading was basically responding to what we had to  
13 say, which was slightly different from what Adams had said  
14 in its motion.

15 MR. HUTTON: Yes, Your Honor. The thrust of the  
16 Bureau's comments was do not add Issue 1, but --

17 JUDGE SIPPEL: Right.

18 MR. HUTTON: -- add Issue 2 unless --

19 JUDGE SIPPEL: That is right.

20 MR. HUTTON: -- a meaningful explanation was  
21 provided by Reading.

22 JUDGE SIPPEL: That is right.

23 MR. HUTTON: In response, Reading did file a reply  
24 pleading directed at the Issue 2 matter. I did not think  
25 that was inappropriate because the nature of the Bureau's

1 pleading and also because under 1.294 to the extent their  
2 position was adverse to my client's interest I viewed it as  
3 an opposition to which a reply was available.

4 JUDGE SIPPEL: Well, everything that you say makes  
5 a lot of logical sense. I did not have any problem with it.  
6 Since there was nothing filed from the Adams side, I just  
7 went ahead and took from it what I felt was helpful to me.  
8 I would continue to do that.

9 If there is a serious abuse of this process  
10 detected or if somebody feels like this has gone beyond what  
11 is entitled to be done then, you know, I will consider that,  
12 but what I basically am going to do, I am going to look at  
13 these pleadings and take out of it what I think is important  
14 to my ruling, and I am going to disregard the rest.

15 Let's see how it goes this time. I have made the  
16 ruling. Does everybody understand what I said?

17 MR. HUTTON: Yes, Your Honor.

18 JUDGE SIPPEL: All right. We are going to go with  
19 that. As I say, I am expecting, counsel, that if you are in  
20 that category of the extra pleading, getting the benefit of  
21 the extra pleading, you know, you in effect have to show  
22 cause in your reply why it is necessary and limit it to  
23 something very specific that the Bureau has come up with.  
24 Otherwise I am just not going to pay any attention to it.  
25 All right. Let's see how it goes.



1           Before I get into these bench rulings on  
2       discovery, is there anything more that anybody else wants to  
3       raise of a procedural, general nature? Anything more I can  
4       do to help move this along?

5           MR. COLE: Your Honor, I had one question. I do  
6       not have the one document I needed. In your ruling on our  
7       motion to enlarge that came out last Friday, the --

8           JUDGE SIPPEL: Right.

9           MR. COLE: -- September 3 ruling, there is one  
10      case which is cited called Vela Broadcasting. I think it is  
11      cited by you as Velo, but I believe it is Vela, V-E-L-A, and  
12      it appears to be a General Counsel's Order.

13           We have not been able to track a copy of that  
14      down, and I was wondering if you have a copy if you could  
15      have your secretary make it available to me?

16           JUDGE SIPPEL: I will fax it to you.

17           MR. COLE: That would be great.

18           JUDGE SIPPEL: I will fax it to you. It is an OGC  
19      ruling?

20           MR. COLE: I believe it is an 88I hyphen some  
21      other number or 89I hyphen number, which I believe to be a  
22      GC's number.

23           JUDGE SIPPEL: I think I have it in my head what  
24      it is. Okay.

25           MR. COLE: Thank you.

1 JUDGE SIPPEL: I mean, I will let you know I did  
2 try and see if I could find it in the FCC record, and I  
3 could not find it.

4 MR. HUTTON: We are sympathetic to your plight,  
5 Your Honor.

6 JUDGE SIPPEL: I will say no more.

7 MR. COLE: We tried to track it down in the FCC's  
8 library as well, and it is not there. They referred us over  
9 to the General Counsel's office. At that point I figured  
10 well, it would be just as easy if we are going to be here  
11 today I could ask you.

12 JUDGE SIPPEL: It is a relatively short thing on  
13 paper, and I will just have them fax it --

14 MR. COLE: That would be great. Thank you.

15 JUDGE SIPPEL: -- to everybody, including the  
16 Bureau.

17 Let me see now. We now want to get into these  
18 bench rulings. Since this would normally be done by way of  
19 a motion to compel, and the motion to compel would be an  
20 Adams motion in the first instance. Is that right?

21 MR. COLE: No. It is a Reading motion. Reading  
22 is seeking documents from Adams.

23 JUDGE SIPPEL: All right. Then let me restate  
24 that. It would be a Reading motion to compel, and I am  
25 going to ask Mr. Hutton to start off on this.

1 MR. HUTTON: Yes, sir. To start with, I would  
2 like to focus on our first category of documents.

3 On August 23, 1999, Reading filed a motion for  
4 document production by Adams. The first category of  
5 documents was listed as all documents described in 47 CFR,  
6 Section 1.325(c)(1), Romanette (i) through (vi) and (ix)  
7 through (xii). That makes reference to the Commission's  
8 standard document production requirement applicable to  
9 applicants for new broadcast facilities.

10 It technically does not apply automatically to  
11 Adams because this is a comparative renewal case rather than  
12 a case involving all new applicants, but the underlying  
13 rationale for production of the documents delineated in  
14 1.325 does appear to apply to Adams because Adams filed its  
15 application on the same application form, a CC Form 301, and  
16 is in the same posture as any applicant for a new broadcast  
17 facility.

18 Adams responded, and I think we should take these  
19 category by category.

20 JUDGE SIPPEL: Well, yes. Why do we not start  
21 with all bank letters and other financial documents? That  
22 would be Roman numeral (v) under 325. Is that right? All  
23 bank letters and other financial documents with the dollar  
24 amounts expurgated.

25 MR. HUTTON: Yes. That is the first item of

1 controversy.

2 JUDGE SIPPEL: Yes.

3 MR. HUTTON: It is our position that this is a  
4 category that is typically required for a new broadcast  
5 applicant to produce.

6 Adams is in the posture of a new broadcast  
7 applicant, and in fact in this case we think the  
8 justification for production is even more compelling because  
9 Adams is seeking to displace an existing service, and in  
10 order to make a public interest determination that that  
11 would serve the public interest I think there has to be some  
12 inquiry to find out if they actually can go forward with  
13 construction and operation of a new station as proposed.

14 JUDGE SIPPEL: Well, you are in effect saying that  
15 there should be kind of a mini financial issue or a  
16 threshold financial issue considered in the case? That is  
17 what it sounds like.

18 MR. HUTTON: No, no, no. I am not arguing that.  
19 I am just arguing that in order to make a public interest  
20 determination that their proposed new station would serve  
21 the public interest by displacing an existing station, I am  
22 arguing that you could not make such a public interest  
23 determination unless you had some sense that they were able  
24 to go forward with construction of a new station as  
25 proposed.

1 JUDGE SIPPEL: Mr. Bechtel? Mr. Cole?

2 MR. COLE: Your Honor, I believe I will be  
3 handling the argument on that.

4 In response first to Mr. Hutton's threshold notion  
5 or threshold position that the standards set forth in 1.325,  
6 the standard document production request for comparative  
7 proceedings, applies here, the Commission obviously did not  
8 think so because the Commission by its own language in the  
9 rule itself limited the reach of this to full new  
10 comparative proceedings, not comparative renewals.

11 Obviously had the Commission wanted to make it  
12 applicable to all applicants for new facilities regardless  
13 of whether it was a straightforward comparative or a  
14 renewal, the Commission could and would have done so. The  
15 Commission did not do so.

16 There is no issue in this case, nor has Reading  
17 sought one, concerning Adams' financial qualifications.  
18 Adams completed the financial certification in its  
19 application, and Reading has information from that  
20 application that it can explore on its own. If it finds  
21 some reason to assume that there is a problem, it can file a  
22 motion with Your Honor to try to enlarge the issues, at  
23 which point discovery would be appropriate if an issue were  
24 added.

25 Until that time comes, we do not believe that it

1 is appropriate to require the disclosure of financial  
2 information along the lines that Mr. Hutton is seeking.

3 JUDGE SIPPEL: Okay. Does the Bureau have a  
4 position on this?

5 MR. SHOOK: Only to the extent that I believe the  
6 Commission touched on a related subject in the broadcast  
7 auction Order.

8 Frankly, at this point, you know, the reference or  
9 the particular language escapes me, but my recollection of  
10 the situation is that the Commission was generally not going  
11 to be interested in exploring site issues or financial  
12 issues with respect to the applicants that had gone through  
13 the auction basically on the assumption that, you know, once  
14 the entity has acquired the facility via auction that it is  
15 going to find a place to build it and get it built.

16 Now, that reasoning does not necessarily apply to  
17 this situation here, but by the same token it seems to me  
18 that the Commission is, you know, backing away from taking  
19 the kind of look at an applicant's financial situation or at  
20 an applicant's site situation that it might have been more  
21 willing to take a look at in the past.

22 Right now what we have is the, you know,  
23 certifications that have been made by Adams in its  
24 application. Unless there is some reason to go behind those  
25 certifications, it would seem to me that the reasoning that

1 the Commission was employing in the auction situation is  
2 that as a general proposition it is now really not going to  
3 take a look at these situations. It is not going to go  
4 behind the certifications. It will accept the  
5 certifications.

6 That being the case, I would think that, you know,  
7 discovery in this area is not appropriate.

8 JUDGE SIPPEL: Well, the Commission is not going  
9 to accept the certification if somebody comes forward with  
10 evidence --

11 MR. SHOOK: With evidence.

12 JUDGE SIPPEL: -- to question it.

13 MR. SHOOK: Right. Right now, we do not have  
14 that.

15 MR. HUTTON: Your Honor, I would like to respond.

16 JUDGE SIPPEL: Yes. I am going to ask you, Mr.  
17 Hutton.

18 MR. HUTTON: With all due respect to Mr. Shook,  
19 the auction context is a totally different situation. In  
20 that situation you have applicants who have made a  
21 significant down payment to participate in the auction, and  
22 they have to come up with their final payments shortly after  
23 the auction is completed.

24 If they fail to do so, they are subject to  
25 significant financial penalties, and so in that context the

1 Commission is willing to assume that, yes, they are serious  
2 about being able to construct and operate. You do not have  
3 that with the Adams Communications situation.

4 To me it is a matter of just common sense. If you  
5 ask the man on the street well, these fellows here want to  
6 come up with a new broadcast station to displace Channel 8  
7 here in town. How do you feel about that?

8 Do you not think you would want to know well, are  
9 they really going to be able to put their new station on the  
10 air, or am I just going to lose Channel 8? I think it goes  
11 to the heart of the public interest determination that is at  
12 state in this case.

13 JUDGE SIPPEL: These Adams principals, they are  
14 already in the -- some of these Adams principals anyway are  
15 already in the broadcast industry in a fairly large way. Am  
16 I correct on that?

17 MR. COLE: No.

18 MR. HUTTON: No.

19 JUDGE SIPPEL: None of them are?

20 MR. COLE: No.

21 JUDGE SIPPEL: I thought I saw something about  
22 past broadcast experience. That was only on the Parker side  
23 or on the other side?

24 MR. HUTTON: To my knowledge, and counsel for  
25 Adams can speak to this better than I can, but, to my



1 knowledge, some of the principals in Adams previously held  
2 interests in radio stations, but no longer do so.

3 MR. COLE: That is correct.

4 JUDGE SIPPEL: All right. Well, do you want to  
5 respond? I mean, I will take one more round on this.

6 MR. COLE: Well, yes. As far as the common sense  
7 man on the street argument is concerned, the Commission has  
8 focused on that, I believe, and the Commission has indicated  
9 by requiring applicants to submit some information in their  
10 applications, including the basis for their financial  
11 qualification, as to how they are going to build it.

12 Adams has in fact complied with that and provided  
13 that information. I think having satisfied the Commission's  
14 own certification requirements, Adams has done what is  
15 required of it and has responded to at least the  
16 Commission's expectation or demand of a common sense  
17 showing.

18 Again, if Mr. Hutton were to take whatever  
19 information is available to him, either an Adams application  
20 or elsewhere, find out some way, somehow, and again I do not  
21 think he would be able to do this, but if he came up with  
22 something which convinced him that Adams is not financially  
23 qualified, he can then present it to Your Honor in a motion  
24 to enlarge. We can have argument on that and responsive  
25 pleadings.